

Remarks

The Office Action dated February 27, 2008 and made final has been carefully reviewed and the following remarks are submitted in consequence thereof.

Applicant believes that no extension of term is required and that no additional fee for claims is required. If any additional fee is required for an extension of term or claims, the Commissioner is hereby authorized to charge Deposit Account No. 01-2384.

Claims 30-35, 38-50 and 53-56 are now pending in the present application.

Applicants acknowledge and appreciate the allowance of claims 53-56 and the indication of allowable subject matter in claim 31. It is respectfully submitted that the remaining claims define allowable subject matter as well, and Applicants earnestly solicit allowance of the all the claims in light of the following remarks.

Applicants will now consider the § 103 and § 102 rejections in the order set forth in the Office Action.

1. Sadow in view of Liang and Sparks

The rejection of claims 30, 34, 35 and 38-47 under 35 U.S.C. § 103(a) as being unpatentable over Sadow in view of Liang and further in view of Sparks (U.S. Patent No. 853,566) is respectfully traversed. It is not believed that the cited references present a *prima facie* case of obviousness of the subject matter claimed.

The Office concedes on page 2 of the Office Action that Sadow does not disclose a handle being pivotable relative to the distal end of the arm portion. As the Office and the Applicants agree on this point, Applicants will focus on the remaining references cited in the rejection.

Liang is cited in the Office Action as disclosing an arm portion with an adjustable length and a handgrip that can pivot about the distal end of the arm, and the Office Action asserts that it would be an obvious alternative to use the Liang handle in the bag of Sadow.

Sparks is cited for teaching a separate connector for a handle, and the Office Action asserts that it would have been obvious to provide a separate connector for mounting the end of the handle to enable one to install the handle properly.

Applicants respectfully traverse the positions taken with respect to Sadow, Liang and Sparks for numerous reasons.

The proffered motivation to use the sparks connector to enable one to install a handle properly is not consistent with the disclosures of the references themselves. Nothing in the disclosures of Sadow and Liang indicate any problems with installation of their respective handles that would have logically commended one in the art at the time of the invention to utilize the Sparks connector with the Liang handle. Further, even if the combination cited in the Office Action were to be pursued, it would not result in the invention claimed.

The Liang handle, as Applicants have noted previously, includes a handle securing ridge (70) configured for rotatable mounting about a second retaining lip (72) on the end of the rod (56). That is, Liang discloses a handle (42) that mounts directly to the rod (56), and the handle (42), including the securing ridge (70), rotates as a single piece upon the rod (56). The Liang handle would obviate any need for a separate connector, including but not limited to the Sparks connector. Nothing in the written description of Sadow describes or suggests that a connector would be necessary or desirable to properly mount the handle to the rod.

Sparks describes a ferrule attachment for uniting a handle and shank of a shovel. To that end, Sparks describes a simple practical and efficient means for “rigidly uniting” the ferrule to the handle. *See* Sparks page 1, lines 16-19. Sparks describes a ferrule (2) provided with a groove (7) that receives a bar (3). The bar (3) is joined to the ferrule (2) with a rivet (8) to “lock the bar and ferrule to each other against relative movement.” *See* Sparks page 1, lines 62-67. Sparks further describe that the shank is snugly fitted within the ferrule to “prevent relative movement of the parts one upon the other.” *See* Sparks page 1, lines 70-77. As such, the Sparks ferrule (2) is provided to positively prevent any movement of the handle (4) relative to the ferrule (2), and also to prevent any movement of the ferrule (2) relative to the shank (1). From this perspective, Sparks, like Sadow, does not disclose a pivoting handle construction at all and adds

nothing to the teaching of Liang with respect to the invention claimed. The Sparks ferrule (2), if used with the Sadow handle, would not result in the claimed invention, and would apparently render the Liang handle inoperative to move as Liang describes. The rigidly united handle assembly of Sparks simply does not logically commend itself to the Liang disclosure concerning a movable handle.

None of Sadow, Liang, and Sparks, whether considered separately or in combination, disclose or suggest a separately provided connector, and a hand grip that can pivot relative to said connector about a pivot axis that intersects the hand grip, in combination with the other recitations of claim 30. There is no apparent reason why such a connector would be desirable or advantageous in view of the teaching of Sparks, Sadow or Liang. The motivation provided in the Office Action to provide such a connector, namely to enable one to install the handle properly, finds no support in the cited references. Liang and Sparks, for example, express opposing views on “proper” mounting of the handle in that Liang advocates a handle directly connected to a rod so that it may rotate as a single piece on the rod, while Sparks advocates an indirect connection to a shank via the ferrule which positively prevents any relative movement between any of the parts.

Applicants also respectfully submit and maintain, for the reasons explained in previous responses, that the Sadow and Liang references actually teach away from one another on pertinent aspects of the invention as claimed. It is not believed that the Office has adequately addressed such arguments. The U.S. Supreme Court has noted that when the prior art teaches away from a claimed invention, that invention tends to be non-obvious. Such evidence must therefore be considered in a proper obviousness analysis.

Claim 30 is accordingly submitted to be patentable over the cited art, and when the recitations of dependent claims 34, 35 and 38-47 are considered in combination with the recitations of claim 30, claims 34, 35 and 38-47 are likewise submitted to be patentable over the cited art.

Applicants accordingly request that the § 103(a) rejection of claims 30, 34, 35 and 38-47 be withdrawn.

2. Sadow in view of Liang and Sparks and further in view of Browning

The rejection of claims 32 and 33 under 35 U.S.C. § 103(a) as being unpatentable over Sadow in view of Liang and Sparks and further in view of Browning (U.S. Patent No. 3,606,372) is respectfully traversed.

Browning is cited for teaching an arm having a non-circular cross section. Browning does not cure the deficiencies of Sadow, Liang and Sparks with respect to claim 30, and claim 30 is submitted to be patentable over the cited art. Browning does not teach a separately provided connector and a handle that can pivot relative to the connector, nor does it cure the incompatible teaching concerning certain aspects of the claimed invention that are detailed above with respect to the teaching of Sparks and Liang, and also as detailed in Applicants' previous responses with respect to the teaching of Sadow and Liang.

Claim 30 is therefore submitted to be patentable over the cited art. Likewise. When dependent claims 32 and 33 when considered in combination with independent claim 30, claims 32 and 33 are likewise submitted to be patentable over the cited art.

Applicants accordingly request that the rejection of claims 32 and 33 be reconsidered and withdrawn.

3. Sadow in view of Liang and Sparks and further in view of Miyoshi

The rejection of claims 48, 49 and 50 under 35 U.S.C. § 103(a) as being unpatentable over Sadow in view of Liang and Sparks, and further in view of Miyoshi is respectfully traversed.

Miyoshi fails to disclose a pivoting handle at all, and like Sadow and Sparks fails to add anything to the teaching of Liang with respect to the invention claimed. The combination of references simply fail to disclose or suggest a connector that facilitates pivoting of a handle as recited in independent claim 48. Only Liang describes a handle that can move relative to another component, and Liang accomplishes such relative movement with a direct connection that does not involve a connector. Sparks is the only cited reference that discloses a connector, and it serves to positively prevent movement of the handle *relative to the connector* as claim 48 recites.

Additionally, Miyoshi does not cure the incompatible teaching of Liang and Sparks, and also does not cure incompatibilities in the teaching of Sadow in Liang concerning certain aspects of the subject matter claimed.

Dependent claims 49 and 50, when considered in combination with claim 48, are likewise submitted to be patentable over the cited art.

Applicants accordingly request that the rejection of claims 48, 49 and 50 be reconsidered and withdrawn.

4. Williams et al.

The rejection of claims 30, 34, 35, 37 and 42-47 under 35 U.S.C. § 102(b) as being anticipated by Williams et al. (U.S. Patent No. 4,538,709) is respectfully traversed.

Portion (50a) of Williams is cited as corresponding to the connector recited in claim 30. Applicants note that portion (50a) is described as a tubular section of a pole (50) and as such cannot reasonably be considered to be the recited connector. Additionally, the portion (50a) is clearly not fixedly mounted to the distal end of an arm portion as claim 30 recites, but rather is a telescoping tube section that has freedom of movement with respect to the other pole sections as illustrated in Figures 9 and 10. No element of Williams et al. meets the language of the recited connector, and it is not believed that Williams anticipates any reasonable reading of the present claims.

Williams et al. fails to clearly disclose other aspects of the claimed invention as well. Applicants position with respect to the Williams et al. reference on issues apart from the recited connector is detailed in Applicants' previous responses and is also generally maintained. In the present Office Action, Applicants arguments have so far been found to be unpersuasive, and are advised that the Office can interpret the claims broadly during prosecution and the claims read on the Wilson et al. disclosure.

In reply, Applicants respectfully submit that the Office is not reading the claims broadly in a manner that reads on the Williams et al. disclosure, but rather is interpreting the Williams et al. figures broadly in a manner that corresponds to the claim language. The former would

perhaps be permissible provided that the broad view of the claims language is consistent with its supporting written description. The latter, however, is not believed to be permissible under any circumstance. The Office is not free to disregard the written description of prior art references when evaluating what the prior art teaches or suggests to those in the art.

Applicants accept that in proceedings before the PTO, claims in an application are to be given their broadest reasonable interpretation consistent with the specification. In re Sneed, 218 USPQ 385 (Fed. Cir. 1983). The PTO is to apply to the verbiage of the proposed claims the broadest reasonable meaning of the words in their ordinary usage as they would be understood by one of ordinary skill in the art, taking into account whatever enlightenment by way of definitions or otherwise that may be afforded by the written description contained in the applicant's specification. In re Morris, 44 USPQ2d 1023, 1027 (Fed. Cir. 1997). This does not mean, however, that the Office can reasonably conclude that a claimed "handle" and a claimed "connector" can be interpreted broadly enough to read on a pole unless the associated specification reasonably supports such a view. In the present circumstance, the specification clearly distinguishes the towing handle structure from the arm structure, and also distinguishes the connector structure from the arm and handle structure. There is no tenable position that the "towing handle" described and claimed could reasonably be construed as referencing the arm portion described by Applicants, or the arm portion/pole described in another patent reference, but this is in effect what the Office is doing in the instant rejection.

Applicants acknowledge that identical terminology is not required for an anticipation rejection to be found. *See* MPEP § 2131. Indeed, Applicants refer to telescoping arm portions while Williams et al. refer to telescoping pole sections, each of which refer to corresponding features using different terminology. Applicants are aware of no authority, however, that would authorize the Office to ignore, or even reject, pertinent terminology and the context in which it used in a prior art reference. Thus, when Williams et al. identifies an element as a pole, the Office is not free to disagree and consider the pole to be a handle. Such a rejection fails to reasonably apply the ordinary usage of the words as they would be understood by one of ordinary skill in the art.

The Federal Circuit has held that:

In determining whether such a suggestion [of obviousness] can fairly be gleaned from the prior art, the full field of the invention must be considered; for the person of ordinary skill is charged with knowledge of the entire body of technological literature, including that which might lead away from the claimed invention. . . . *Evidence that supports, rather than negates, patentability must be fairly considered.*

In re Dow Chemical Co., (5USPQ2d 1529 at 1531-1532 (Fed. Cir. 1988) (emphasis added). The Office appears to be rejecting what Williams et al. actually teaches, which undermines the conclusion of obviousness, in favor of a broader view that supports it. The Office may not modify and supersede the actual teaching of Williams et al. under the guise of taking a broad view of the claim language.

The Office is not entitled to take broad views of the prior art such as the Office has done here, where the Office simply ignores the ordinary usage of the words used in the disclosure, and associated teaching of the Williams et al. reference. In other words, the Office appears to have deliberately failed to take into account whatever way of enlightenment by way of definition or otherwise that may be afforded by the written description of the prior art, and instead has opted to broadly interpret drawings in the Williams et al. reference separate and apart from its written description. As a result, the Office has concluded, for example, that components that the written description of Williams et al. discloses to be an element of a pole, are for purposes of examination considered to be a handle, and also that components described in the Williams et al. written description as a pole can for purposes of examination be considered to be a connector.

MPEP § 2125 does permit drawings to be the basis for a prior art rejection, and drawings can anticipate claims if they clearly show the structure which is claimed. MPEP § 2125 carefully states, however, that the drawings must be evaluated for what they reasonably disclose and suggest to those of ordinary skill in the art. One would be remiss to attempt to evaluate this issue without consulting the written description of the Williams et al. patent, which contrary to the views taken by the Office in the present rejection, clearly demarcates which of the components illustrated are handle components and which are not.

As Applicants have explained in detail, the interpretation of the Williams et al. cross section that underlies the present rejection should not be sustained for at least two reasons. First, it is inconsistent with explicit teaching of the Williams et al. references regarding which components are considered to be handle components or pole components. Second, the interpretation is speculative unless supported by some objective evidence, which the written description of Williams et al. does not supply. The written description is simply silent on material aspects of the subject matter being claimed, and the Williams et al. cross section in the figures is at best ambiguous regarding the features that the Office attempts to rely upon. As a whole, Applicants submit that the Williams et al. text and figures fails to present a *prima facie* case of unpatentability of the claimed invention.

For at least the reasons discussed above, Williams et al. is not an anticipating reference for independent claim 30. Likewise, Williams is not believed to suggest the invention of claim 30.

Dependent claims 34, 35 and 42-47 depend directly or indirectly from claim 30, and when the recitations of claims 34, 35 and 42-47 are considered in combination with the recitations of claim 30, claims 34, 35, and 42-47 are likewise submitted to be patentable over Williams et al.

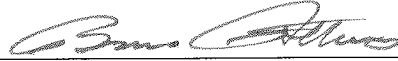
Applicants accordingly request that the § 102 rejection of claims 30, 34, 35, 37, and 42-47 over Williams et al. be withdrawn.

Conclusion

In view of the foregoing amendments and remarks, all the claims now active in this application are believed to be in condition for allowance.

Reconsideration and favorable action is respectfully solicited.

Respectfully Submitted,



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